IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11592 & 14091 of 1994
with
Civil Application No.8942 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHCHANDRA S MEHTA - Petitioner(s)
Versus
DIAMINES & CHEMICALS LTD & 1 - Respondent(s)

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Appearance :
MR RV DESAI for Petitioner(s) : 1,
MR KM PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 04/08/2006

ORAL JUDGMENT

1. Heard the learned Advocates appearing for the respective parties.

2. Today, with the consent of both the learned Advocates, matters are taken up for final hearing.

3. In both the matters, common award passed by the Labour Court, Baroda has been challenged. The Labour Court, Baroda has passed an award in Reference No.739 of 1984 dated 28.6.1994. The Labour Court has granted reinstatement with continuity of service with 50% back wages of interim period.

4. SCA No.11592 of 1994 is filed by workman against direction of denial of 50% back wages by Labour Court. The Management has challenged the very same award in SCA No.14091 of 1994 wherein challenge is made against reinstatement with 50% back wages.

5. This Court has issued Rule and back wages has been stayed with a direction to the Management to

pay last drawn wages under Section 17B of the I.D.Act,1947. Learned Advocate, Mr.K.M.Patel, submitted that Management is paying last drawn wages as per the order of this Court dated 16.2.1993.

6. Before the Labour Court, Baroda, reference was made on 14.9.1984. The statement of claim filed by workman vide Exh.3. According to workman, he joined in the respondent Management w.e.f. 1.10.1977. The charge-sheet was served to him on 22.2.1984. After completion of departmental inquiry, he was dismissed from service. The reply filed by Management vide Exh.9 denying the averments made in the statement of claim by the workman. According to management, after following the due process of law and giving reasonable opportunity in departmental inquiry, dismissal order has rightly been passed by management. Before the Labour Court, the workman has admitted the legality and validity of the departmental inquiry but, finding has been

challenged by the workman. Thereafter, submissions were made by both the learned Advocates before the Labour Court. Then, in Para.7, the Labour Court has considered the question, whether on the basis of evidence led in departmental inquiry, the charge is proved against the workman or not. The Labour Court has considered Exh.10/1 show cause notice which was served to the workman dated 11.2.1984. The allegation against the workman is that on 31.1.1984, in second shift, when workman was remained present, as per column D-12, D-14 the work was entrusted to him. Initially, D-12 column the sample was taken by the workman which was examined and not found proper. Thereafter, at 6.30 hrs., T-28 sample was taken which was also not found accurate. Therefore, having different result in both the samples D-12 and T-28, the management has made allegation against him that there was some mischief on the part of the workman while operating the valve and, therefore, management has served the charge-sheet which was

replied by workman vide Exh.10/3 denying the allegations. The charges have been denied by the workman in departmental inquiry. On behalf of the Management, Shri Jagdish Patel was examined, who was Shift Chemist and according to his evidence, on 31.1.1984, in D-12 moisture content was possible and when plant was in operation, the moisture content is near to 1% and in first shift, moisture content was proper according to record. D-12 three samples have been taken having the different result and it was also standard dye and considering the result of earlier and subsequent shift, no such report was made in past. Therefore, according to witness of the Management, there was some mischief committed by the workman while taking the sample. Thereafter, on behalf of the Management, one Shri Panjakbhai Shah, who Post Product Engineer, was examined, who also gave the same evidence before the Inquiry Officer. In his evidence, he has made allegation against the present workman and technical details have been given by the said

witness. According to his evidence, it was a serious lapse on the part of the workman which may result in serious damage to the company. This evidence of the Management has been scrutinized by the Labour Court in light of the oral evidence led before the Labour court. Ultimately, the Labour Court has come to the conclusion that negligence on the part of the workman is found to be proved. For that, punishment is little harsh and unjustified. The Labour Court has granted 50% back wages of interim period as there was no discussion about granting the back wages on what basis or on what evidence. The evidence from employer producing the detective report has been ignored on the ground that it was hear-say evidence and no documentary evidence has been produced by the Management. In light of these observations made by the Labour Court, the Labour Court has come to the conclusion that punishment is harsh and, therefore, awarding 50% back wages in favour of the workman would meet the ends of justice between the parties and which would be

the sufficient punishment to the workman.

7. I have considered the submissions made by both the learned Advocates appearing on behalf of employer and workman. Learned Advocate, Mr.R.V.Desai, has read almost entire award before this Court and submitted that Labour Court has rightly granted the reinstatement and for back wages part, the matter can be remanded back. Learned Advocate, Mr.K.M.Patel, submitted that the order of reinstatement itself is bad because the Labour Court should not have to scrutinize the evidence or to examine whether there is sufficiency of evidence on record or not. According to him, the Labour Court should have to examine the evidence led in departmental inquiry as it is, whether the finding is based upon any legal evidence or not. The Labour Court has examined it as if the Labour Court has become inquiry officer. Looking to the observations and finding of Labour Court while analyzing the evidence led in departmental inquiry, the Labour

Court itself become an inquiry officer and discussed the evidence and come to the conclusion that on the basis of this evidence, according to him, charge is not proved against the workman. This is not a function of Labour Court to decide the question of finding being an appellate authority. The question of finding is required to be examined by the Labour Court, whether reasoning given by the inquiry officer is contrary to the record or it is based on legal evidence or not but, not to scrutinize in a manner as if to work as an inquiry officer and to decide that as if the Labour Court was the inquiry officer, it should have to come to this conclusion. Such approach of the Labour Court itself is contrary to law. When inquiry has been admitted by the workman, the Labour Court having very little scope to interfere with the finding. The discussion in Para.9 after considering the evidence of two witnesses of the Management that itself suggests that Labour Court has become inquiry officer and examined the finding given by

the inquiry officer and then to come to the conclusion that allegations may be true to some extent. Such type of half-hearted finding of Labour Court itself is not proper while exercising the power under section 10 of the I.D.Act,1947. Therefore, according to my opinion, the role which has been performed by the Labour Court being an inquiry officer while scrutinizing the evidence led in inquiry which was on record and then come to conclusion that finding of inquiry officer is contrary to settled law which is beyond the scope of jurisdiction of the Labour Court. The Labour Court cannot substitute its own finding on the basis of evidence recorded in inquiry. No doubt, the Labour Court can substitute the punishment but, cannot substitute the finding as if that inquiry was conducted before the Labour Court. Therefore, considering this aspect, the Labour Court has not discussed the question of back wages and no reason has been given by the Labour Court at all as to why and on what ground Labour Court has denied 50% back

wages and granted 50% back wages. Such type of award which apparently found non-application of mind on the part of Labour Court while considering such type of award, when serious allegations have been made against the workman. Therefore, entire award is required to be set aside on the aforesaid reasons. Therefore, the matter is remanded back to the Labour Court, Baroda for fresh decision on the basis of the evidence recorded by the Labour Court and also considering the evidence on record before the inquiry officer. Therefore, according to my opinion, the award in question is not sustainable and vitiated because quite different role has been performed by the Labour Court while considering the finding given by inquiry officer in departmental inquiry.

8. In the result, SCA No.14091 of 1994 filed by the Management is allowed. The award passed by the Labour Court in Reference No.739 of 1984 dated 28.6.1994 is hereby quashed and set aside,

while remanding the matter back to the Labour Court, Baroda to decide the matter afresh on the evidence which is already on record and no further evidence has to be taken by the either side before the Labour Court. The Labour Court should have to examine both the questions, whether finding given by Inquiry Officer is legal and valid or not and whether workman is entitled the reinstatement and back wages or not. It is further directed to the Labour Court, Baroda to decide the said reference No.739 of 1984 within a period of six months from the date of receiving the copy of this order.

9. Meanwhile, it is directed to the petitioner Management to pay last drawn wages which is at present the Management is paying to the workman concerned till the Labour Court, Baroda decides the reference afresh as directed by this Court on merits. It is directed to the Labour Court that in case if further time is required, then, Labour Court should have to ask for extension before

this Court. Both the learned Advocates of respective parties assure this Court that they will co-operate the hearing before the Labour Court, Baroda and they will not ask for unnecessary adjournment before the Labour Court. When the matter will come for extension from the Labour Court, Baroda, at that occasion, this Court will consider the question of relief under Section 17B of the I.D.Act,1947 to the workman or not.

10. In view of the above, SCA No.11592 of 1994 filed by the workman is dismissed as disposed of. Rule discharged. Interim relief, if any, stands vacated.

11. In view of the above, Civil Application No.8942 of 2006 is disposed of as no order is necessitated.

(H.K.RATHOD,J.)

(vipul)